

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Investigation on the Commission's Own Motion to Determine Whether the Aliso Canyon Natural Gas Storage Facility has Remained Out of Service for Nine or More Consecutive Months Pursuant to Public Utilities Code Section 455.5(a) and Whether any Expenses Associated with the Out of Service Plant Should be Disallowed from Southern California Gas Company's Rates.

I.17-03-002
(Filed March 2, 2017)

**RESPONSE OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G)
IN OPPOSITION TO MOTION OF IMPERIAL IRRIGATION DISTRICT
FOR CONSOLIDATION OF INVESTIGATIONS 17-02-002 AND 17-03-002**

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation pursuant to Senate Bill 380 to determine the feasibility of minimizing or eliminating the use of the Aliso Canyon natural gas storage facility located in the County of Los Angeles while still maintaining energy and electric reliability for the region.

I.17-02-002
(Filed February 9, 2017)

**RESPONSE OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G)
IN OPPOSITION TO MOTION OF IMPERIAL IRRIGATION DISTRICT
FOR CONSOLIDATION OF INVESTIGATIONS 17-02-002 AND 17-03-002**

Pursuant to 11.1(e) of the California Public Utilities Commission’s (“Commission” or “CPUC”) Rules of Practice and Procedure, Southern California Gas Company (“SoCalGas”) hereby submits its Response in Opposition to the Motion of Imperial Irrigation District (“IID”) for Consolidation of Investigations (“I.”) 17-02-002 and 17-03-002 (“Motion”).

I. INTRODUCTION

IID seeks to consolidate two separate proceedings, initiated as a result of two separate statutes, so they can be “refocused into a public investigation” addressing the root cause of the Aliso Canyon well leak. IID’s Motion is based on inaccurate descriptions of the scope and purpose of the two initiated proceedings, and is contrary to numerous Commission statements about the timing of a potential proceeding regarding the root cause of the leak. Consolidating these proceedings will not accelerate the root cause investigation which is IID’s stated objective, but instead would delay the determination of the separate questions these proceedings are required to address. Nor does IID attempt to provide any solution to statutory requirements, such as the requirement that the hearing for the 455.5 investigation “be

consolidated with the hearing for the general rate case.”¹

IID’s Motion oversimplifies complex issues that the Commission has already determined should be separately adjudicated. Separate adjudication of these issues makes sense as the issues address distinct questions, hinge on different facts and considerations, and involve different interested parties.

First, pursuant to Public Utilities Code Section 714(a), the Commission initiated I.17-02-002 to determine the feasibility of minimizing or eliminating the use of Aliso Canyon while still maintaining energy and electric reliability for the Los Angeles region and just and reasonable rates in California.² The scope of I.17-02-002 involves a *prospective* look at California’s energy infrastructure and the importance of Aliso Canyon in maintaining energy reliability and reasonable rates now and in the future.

Second, pursuant to Public Utilities Code Section 455.5, the Commission initiated I.17-03-002 to determine whether Aliso Canyon has remained out of service for nine consecutive months; and if found to be out of service, whether the Commission should disallow costs related to Aliso Canyon from the rates of SoCalGas.³ The scope of I.17-03-002 involves a *retrospective* look at the operating status of Aliso Canyon and addresses factual and legal issues relating to whether Aliso Canyon has been out of service for nine consecutive months and whether, as a result of being out of service, rates should be reduced.

Finally, the Commission has not yet determined whether to initiate a proceeding related to the root cause of the Aliso Canyon leak. This is because the root cause analysis of the Aliso Canyon leak is ongoing.

Each of these three issues is complex and should be considered independently as they are distinct and independent factual and legal issues. Judicial economy, Commission resources, and due process are best served by continuing to keep each proceeding focused on

¹ Pub. Util. Code, § 455.5(c); unless otherwise noted, all references are to the California Public Utilities Code.

² Scoping Memo, I.17-02-002, at 1-2.

³ OII I.17-03-002, at 1.

their respective issues. As such, IID's Motion should be denied.

II. FACTUAL BACKGROUND

A. I.17-02-002 (Public Utilities Code Section 714)

On May 10, 2016, Governor Brown signed into law SB 380, which, among other things, created Section 714 of the Public Utilities Code.⁴ Public Utilities Code Section 714(a) states as follows:

The commission, no later than July 1, 2017, shall open a proceeding to determine the feasibility of minimizing or eliminating use of the Aliso Canyon natural gas storage facility located in the County of Los Angeles while still maintaining energy and electric reliability for the region. . . .⁵

Pursuant to Public Utilities Code Section 714, on February 17, 2017, the Commission issued an Order Instituting Investigation (OII) initiating proceeding I.17-02-002.⁶ Through this OII, the Commission stated:

The purpose of this OII is to determine the feasibility of minimizing or eliminating the use of the Aliso Canyon Natural Gas Storage Facility (Aliso Canyon) while still maintaining energy and electric reliability for the Los Angeles region and just and reasonable rates in California.⁷

A prehearing conference was held in the I.17-02-002 proceeding on April 17, 2017.⁸ Thereafter, on June 20, 2017, the Commission issued its Scoping Memo in the I.17-02-002 proceeding. In its Scoping Memo, the Commission determined that the scope of the proceeding is to address two questions:

⁴ OII I.17-02-002, at 2.

⁵ Pub. Util. Code § 714(a).

⁶ OII I.17-02-002.

⁷ *Id.* at 1.

⁸ In addition to SoCalGas, the following parties attended this prehearing conference: City of Long Beach Oil and Gas Department, City of Los Angeles - Office of Petroleum Administration, Imperial Irrigation District, Consumer Watchdog/Food and Water Watch/Paul E. Hunt, Protect our Communities, Issam Najm, Coalition of CA Utility Employees, Environmental Defense Fund, Save Porter Ranch, County of Los Angeles, Sierra Club, California Energy Storage Alliance, California Independent System Operator Corporation, Herb Emmrich, Southern California Generation Coalition, City of Los Angeles, Indicated Shippers, Independent Energy Producers Association, Shell Energy, and the Office of Ratepayer Advocates.

- 1) Is it feasible to reduce or eliminate the use of the Aliso Canyon Natural Gas Storage Facility while still maintaining electric and energy reliability for that region?
and
- 2) Given the outcome of Question 1, should the Commission reduce or eliminate the use of the Aliso Canyon Natural Gas Storage Facility, and if so, under what parameters?⁹

Notably, the Commission unequivocally stated that issues such as the cause of the natural gas leak (including issues of culpability) and issues related to the Public Utilities Code Section 455.5(b) are *expressly* beyond the scope of the I.17-02-002 proceeding:

[I]t is useful to note particular issues that are outside the scope of this proceeding.

...

(2) Any issues related to the cause of the natural gas well failure, including issues of culpability. Investigations into the cause of the leak are being conducted by the Commission's SED as well as DOGGR, the agency with primary jurisdiction over the mechanical and operational conditions of the wells. The Commission continues to work closely with DOGGR in undertaking its own investigation.

...

(5) Issues related to Pub. Util. Code § 455.5(b), which requires a utility to notify the Commission if any portion of a major facility has been out of service for nine consecutive months. This is being addressed in Investigation 17-03-002.¹⁰

B. I.17-03-002 (Public Utilities Code Section 455.5(b))

1. Public Utilities Code Section 455.5

Public Utilities Code Section 455.5 states in relevant part:

⁹ Scoping Memo, I.17-02-002 at 7.

¹⁰ *Id.* at 11-13.

(a) In establishing rates for any electrical, gas, heat, or water corporation, the commission may eliminate consideration of the value of any portion of any electric, gas, heat, or water generation or production facility which, after having been placed in service, remains out of service for nine or more consecutive months, and may disallow any expenses related to that facility....

(c) Within 45 days of receiving the notification specified in subdivision (b), the commission shall institute an investigation to determine whether to reduce the rates of the corporation to reflect the portion of the electric, gas, heat, or water generation or production facility which is out of service. For purposes of this subdivision, out-of-service periods shall not include planned outages of predetermined duration scheduled in advance. The commission's order shall require that rates associated with that facility are subject to refund from the date the order instituting investigation was issued. The commission shall consolidate the hearing on the investigation with the next general rate proceedings instituted for the corporation.¹¹

Although SoCalGas did not believe that notice was required, it provided notice out of an abundance of caution to the Commission on January 13, 2017. As a result of SoCalGas' January 13, 2017 notice, on March 10, 2017, the Commission issued an OII to initiate proceeding I.17-03-002.

In I.17-03-002, the Commission clearly delineated the issues that were within the scope of the proceeding and those that were outside the scope:¹²

(1) Has Aliso Canyon been out of service for nine consecutive months pursuant to Pub. Util. Code § 455.5(a)?

(2) If Aliso Canyon has been out of service pursuant to Pub. Util. Code § 455.5(a) whether or not rate adjustments should be made?

(3) If rates are adjusted, when should they start?

(4) What should be the amount of the adjusted rates?

(5) What should be the correct accounting of these adjusted rates?

(6) If Aliso Canyon is out of service, should it be considered a

¹¹ Pub. Util. Code § 455.5(a), (c).

¹² *Id.* at 10-11.

plant held for future use?¹³

I.17-03-002 further states, among other things, that the following issue “[is] outside the scope” of the I.17-03-002 proceeding:

(2) Any issues related to the cause of the natural gas leak or issues of culpability.¹⁴

A prehearing conference was held in this proceeding on June 5, 2017.¹⁵ Thereafter, during the meet and confer process regarding the scope of the proceeding, the Assigned Administrative Law Judge clarified the scope of Phase 1 of I.17-03-002 in no uncertain terms:

1. Has Aliso Canyon been out of service for nine consecutive months pursuant to Pub. Util. Code Section 455.5(a)?

2. Could it be considered a plant held for future use? If so, should it be considered so here?

If it is determined that Aliso Canyon has been out of service for nine consecutive months and should not be considered plant held for future use, pursuant to Public Utilities Code Section 455.5(c), I.17-03-002 will be consolidated with SoCalGas’ next general rate case (GRC) proceeding.¹⁶¹⁷ There is no mandate under Public Utilities Code Section 714 that I.17-02-002 be consolidated with the next GRC.

C. Root Cause Analysis of the Aliso Canyon Leak

The Commission has repeatedly stated that until the investigation and report on the Aliso Canyon leak is complete, it is premature for the Commission to consider opening an investigation into the cause of the Aliso Canyon leak. In its 2016 General Rate Case Decision, the Commission stated as follows in its Conclusions of Law:

¹³ *Id.* at 10.

¹⁴ *Id.* at 10-11.

¹⁵ In addition to SoCalGas, the following parties attended this prehearing conference: Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN), the Southern California Generation Coalition (SCGC), and the Imperial Irrigation District (IID).

¹⁶ *See* Pub. Util. Code § 451(c).

Until SED's investigation and report on the Aliso Canyon Leak is finished, it is premature for the Commission to open an Order Instituting Investigation into the causes of the Aliso Canyon leakage, whether past expenditures were appropriately spent to detect these problems, and whether SoCalGas' ratepayers should bear any responsibility for the various costs incurred as a result of the leakage at Aliso Canyon.¹⁸

As the Commission and the parties to these proceedings are aware, the independent third party expert hired to investigate and prepare such report, is currently estimated to have this report completed in the first or second quarter of 2018.¹⁹ In addition, in its discussion of the numerous items that are outside the scope in both I.17-02-002 and I.17-03-002, the Commission specifically identified the actions it has taken in response to the Aliso Canyon leak as outside the scope.²⁰

III. IID'S MOTION TO CONSOLIDATE SHOULD BE DENIED

A. I.17-02-002, I.17-03-002, and Questions Related to The Root Cause of the Gas Leak Involve Distinct Questions of Law and Fact

Rule 7.4 provides that "[p]roceedings involving related questions of law or fact may be consolidated." Here, I.17-02-002, I.17-03-002, and issues related to the root cause of the Aliso Canyon gas leak involve entirely different statutes, distinct facts, and distinct legal issues. There is no basis for consolidating the proceedings.

1. The Three Issues IID Seeks to Consolidate Do Not Overlap

There are three separate and distinct issues identified:

1. I.17-02-002: The feasibility of minimizing or eliminating the use of Aliso Canyon while still maintaining energy and electric reliability for the Los Angeles region and just and reasonable rates in California.
2. I.17-03-002: Whether Aliso Canyon has remained out of service for nine consecutive months pursuant to Public Utilities Code Section 455.5(a); and if found to be out

¹⁸ D.16-06-054 at 323 (Conclusion of Law No. 74).

¹⁹ See March 2017 "Aliso Canyon SS25 Well Leak Investigation Overview" power point, at slide 8. Available at: http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/News_Room/News_and_Updates/AlisoCanyonInvestigationOverviewAPR2017.pdf

²⁰ See OII 17-02-002.

of service, whether Aliso Canyon is a “plant held for future use” under Public Utilities Code Section 455.5(f). If Aliso Canyon is determined to be out of service and not considered a plant held for future use, whether the Commission should disallow all costs related to Aliso Canyon from the rates of SoCalGas.

3. Root Cause Analysis: Issues related to the cause of the natural gas leak or issues of culpability.

Turning first to each separate issue, there are no overlapping facts that need to be developed. As to I.17-02-002, Energy Division and interested parties will be undertaking a modeling effort to determine the effects of not having Aliso Canyon on the gas and electric system, and its impacts on reliability and rates. This will be determined using forecasts for future demand for gas and electricity, understanding how the gas system operates, and considering the financial and rate impact to gas and electricity customers.

As to the second issue (I.17-03-002) – whether Aliso Canyon has remained out of service for nine consecutive months pursuant to Public Utilities Code Section 455.5 – this requires determining facts and legal issues about the operations and status of Aliso Canyon from the time of the leak until the present and whether rates should be reduced if the Commission determines that the storage field has been out of service for nine months or more.

As to the third issue – the root cause of the natural gas leak and questions as to culpability – there has not yet been a determination as to whether a proceeding should be initiated. The reason, as stated numerous times by the Commission, is that a determination about whether to open a proceeding, and if opened, the scope, cannot be made until the root cause analysis is complete.²¹ It is far too early in the process for any party to know the factual or legal issues to be addressed in any proceeding initiated with respect to the root cause analysis of the Aliso Canyon Leak as the root cause analysis is not expected to be complete until 2018.

²¹ D.16-06-054 at 323.

In sum, these issues do not overlap. I.17-02-002 involves forecasting gas and electric demand using the gas system, and considers rate impacts if Aliso Canyon is removed. I.17-03-002 looks backwards during a specific time period to determine whether Aliso Canyon was and continues to be used and useful. Neither of these questions involves the third issue regarding potential liability from a yet-to-be completed root cause analysis, a potential proceeding that has yet to be initiated.

2. IID's Arguments That There Are Overlapping Issues Are Misleading and Unavailing

IID's Motion fails to demonstrate that these two Investigations and determination of the cause of the gas leak involve related issues of law or fact. Instead, IID distorts the issues raised in the proceedings in an attempt to argue that consolidation is appropriate. Indeed, IID argues that "I.17-02-002 is investigating whether Aliso Canyon *should* be reopened, while I.17-03-002 is investigating whether Aliso Canyon *has been* open."²² As fully set forth above, I.17-02-002 is not investigating whether Aliso Canyon "should be reopened," but, instead, is evaluating the feasibility of reducing or eliminating the use of Aliso Canyon while maintaining reasonable rates. Likewise, I.17-03-002 is not investigating whether Aliso Canyon "has been open," but, instead, whether the storage field has been out of *service* for nine or more consecutive months. IID's attempt to minimize the complexity of each of the two proceedings should be rejected.

IID also argues that "the parties would be hindered by duplicative litigation and resulting conflicting decisions if [the Investigations are] not consolidated."²³ As stated above, I.17-02-002 is a prospective evaluation as to whether use of Aliso Canyon should be reduced or eliminated, while I.17-03-002 is a retrospective evaluation as to whether Aliso Canyon has been out of service for nine or more consecutive months. These are not related issues, and there is no risk of inconsistent decisions.

²² IID Motion to Consolidate, at 7 (*italics in original*).

²³ *Id.* at 8.

In sum, IID fails to demonstrate why the factual or legal issues related to these three separate matters overlap. Instead, IID's Motion attempts to mischaracterize and oversimplify each proceeding, and fails to make any affirmative showing needed to meet Rule 7.4. Accordingly, I.17-02-002, I.17-03-002 and determination of the cause of the gas leak involve distinct issues of law or fact such that consolidation is inappropriate.

B. IID's Request to Insert Questions Related to The Cause of the Gas Leak Is Improper

Although IID ostensibly seeks to consolidate I.17-02-002 and I.17-03-002, what it appears to want is that "the consolidated proceeding should be refocused into a public investigation."²⁴ IID expresses displeasure with the pace of the independent root cause inquiry, but that pace will not be affected by consolidating two proceedings where the cause of the gas leak has been expressly excluded in the OII for each proceeding. And to add the subject of causation to a consolidated proceeding would be contrary to what the Commission has stated on numerous occasions: the root cause analysis must conclude before any further decisions are made as to whether or not to open an investigation into the cause of the leak.

C. Consolidating Investigations 17-02-002, 17-03-002, And Issues Related to the Cause of the Gas Leak Would Delay the Proceedings

In its Motion, IID argues that consolidation is appropriate because in its estimation, the "investigation" into Aliso Canyon has been "unnecessarily delayed" and that consolidation is the best way to "refocus" the Commission.²⁵ IID's statement is unavailing.²⁶ First and foremost, the Commission has said numerous times that the root cause analysis must be concluded before any further decisions are made as to whether or not to open a proceeding regarding the cause of the leak. Should IID prevail, the separate issues in the two proceedings already opened would be delayed until the root cause analysis is complete.

²⁴ IID Motion to Consolidate at 10.

²⁵ *Id*

²⁶ IID also makes the deceptive argument that "[e]very party in I.17-03-002 is a party in I.17-02-002." *Id.* at 9. What IID omits, however, is that there are many parties in I.17-02-002 who are not parties in I.17-03-002.

Both the I.17-02-002 and I.17-03-002 proceedings have already been initiated to address their standalone facts and legal issues. Both proceedings are already moving forward, and both have held prehearing conferences. As set forth above, the first phases of I.17-02-002 and I.17-03-002 are set to conclude in December 2017/January 2018. Delaying these two Investigations is not expeditious, and, moreover, is grounds to deny the Motion where such a request would delay proceedings.²⁷

In sum, consolidating these issues into one giant proceeding would be unwieldy and would not accelerate the cause investigation, but would certainly delay resolution of the separate issues in I.17-02-002 and I.17-03-002.

IV. CONCLUSION

IID's Motion fails to demonstrate that I.17-02-002 and I.17-03-002 involve related questions of law or fact such that consolidation is warranted under Rule 7.4. Rather, the proceedings are entirely distinct and it would be inefficient to consolidate these proceedings, with one another or with a potential future proceeding regarding the root cause analysis, which the Commission has repeatedly affirmed cannot be contemplated until the root cause analysis is completed. Accordingly, SoCalGas respectfully submits that the Motion should be denied.

Respectfully submitted,

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²⁷ See, e.g., May 28, 2015 Decision Denying Motion to Consolidate at 6 (A.14-10-014).